

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARVIN BUCHEE BRADLEY,

Defendant-Appellant.

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UNPUBLISHED

May 22, 2007

No. 269568

Wayne Circuit Court

LC No. 05-012647-01

Before: Cooper, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree murder, MCL 750.317,<sup>1</sup> assault with intent to commit murder, MCL 750.83, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to concurrent prison terms of 20 to 30 years each for the murder and assault convictions, and a consecutive two-year term of imprisonment for the felony-firearm conviction. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. Underlying Facts

On the afternoon of June 12, 2005, Martel Solomon and the decedent were walking in the street and passed defendant's house on the corner of Mansfield and Elmore Streets in Detroit. Solomon testified that defendant, whom he recognized from school and the neighborhood, was on the porch with others. Solomon testified that someone yelled, "What the f\*\*k yall doing here."<sup>2</sup> Solomon and the decedent continued walking, as Solomon urged the decedent not to respond. Solomon testified that defendant ultimately moved off the porch into the street and "started shooting" a pistol. Solomon and the decedent ran and attempted to jump a fence to escape, and defendant "shot at [the decedent] while he was jumping the fence." The decedent

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<sup>1</sup> Defendant was charged with first-degree murder, MCL 750.316.

<sup>2</sup> Solomon indicated that the decedent and defendant "never got along" while they were in middle school. Before the shooting, Solomon had no problems with defendant.

fell over the fence into a neighbor's backyard.<sup>3</sup> Solomon was shot in the arm, and continued running. The decedent died from a gunshot wound to the head.

Solomon identified defendant as the shooter to the police. According to police testimony, when they arrived at the crime scene, they spoke with John Kealing, a/k/a Leonard Jackson, Cordero Jones, Lamar Jones, and Veno Tuff, who had been outside with defendant. The police tested each of the men for gunshot residue. Defendant was not there and could not be located. Defendant was subsequently arrested on August 17, 2005, in Atlanta, Georgia.

At trial, defendant, Cordero, and Tuff all testified that they were standing together when the decedent and Solomon drove by, taunting them by "burning rubber" and playing loud music. When Solomon and the decedent were told to leave, the decedent brandished a gun. Defendant, Cordero, and Tuff fled. Minutes later, defendant, Cordero, and Tuff heard gunshots. Cordero and Tuff testified that they saw a man dressed in black armed with a weapon fleeing the area. Neither Cordero nor Tuff saw defendant in possession of a weapon.

Defendant denied possessing or shooting a firearm on the day of the incident. Defendant denied knowing the decedent or having any disagreement with him, although he admitted that he knew Solomon from his neighborhood. Defendant denied knowing that anyone had been shot, that the police were searching for him, or that there was a warrant for his arrest. Rather, defendant claimed that he did not return to speak with the police on the day of the shooting because he was on probation, and that he did not leave Michigan until two or three weeks after the incident. Defendant claimed that he left Michigan because he "just wanted to go have some fun." Defendant admitted that he gave the Atlanta police an alias and an incorrect date of birth when he was arrested, but claimed that he did so only because he had violated his probation by leaving Michigan.

In rebuttal, a Detroit fugitive apprehension team officer testified that on June 12 and 13, 2005, the police looked for defendant at the homes of his mother and sister, and also spoke to defendant's brother. At that time, defendant's family members were advised that the police needed to locate defendant in connection with a murder. The officer had contact with defendant's family at least three times.

## II. Sufficiency of the Evidence

Defendant first argues that there was insufficient evidence to establish his identity as the actual perpetrator. We disagree.

When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992),

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<sup>3</sup> The decedent's body was found in the neighbor's backyard. The neighbor told the police that he heard arguing, followed by eight or nine gunshots.

amended 441 Mich 1201 (1992). Circumstantial evidence and reasonable inferences arising from the evidence can constitute satisfactory proof of the elements of the crime, including the identity of the perpetrator. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996). This Court will not interfere with the trier of fact's role of determining the weight of evidence or the credibility of witnesses. *Wolfe, supra* at 514. Rather, "a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

The elements of second-degree murder are "(1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse." *People v Aldrich*, 246 Mich App 101, 123; 631 NW2d 67 (2001) (citation omitted). To sustain a conviction for assault with intent to commit murder, the prosecution must establish beyond a reasonable doubt that the defendant committed "(1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder." *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997); see also MCL 750.83. The elements of felony-firearm are that the defendant possessed a firearm during the commission or attempted commission of any felony other than those four enumerated in the statute. MCL 750.227b(1); *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999).

Defendant does not challenge the individual elements of the offenses. He only argues that there was not "enough evidence" that he was the shooter. Identity is an essential element in a criminal prosecution, *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976), and the prosecution must prove the identity of the defendant as the perpetrator of a charged offense beyond a reasonable doubt. *Kern, supra*. Positive identification by a witness may be sufficient to support a conviction for a crime. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000).

The record shows that Solomon was unwavering in his identification of defendant as the shooter. Solomon testified that, at that time of the shooting, no one was near defendant and defendant was the only person with a gun. Solomon indicated that he could easily recognize defendant, explaining that he has "known of" defendant for several years from school and the neighborhood. Immediately after the incident, Solomon told the police that defendant was the shooter while he was being treated at the hospital. Solomon provided a detailed description of defendant that included defendant's nickname, age, height, weight, complexion, hairstyle, and the fact that defendant had teardrop tattoos underneath one of his eyes. The next day, Solomon identified defendant from a photograph. Solomon also identified defendant as the shooter at the preliminary examination and trial. Solomon testified that he was "absolutely positive" that defendant shot him and the decedent. In addition, by defendant's own admission, he was in the area at the time of the shooting.

This evidence, viewed in a light most favorable to the prosecution, was sufficient to permit a rational trier of fact to reasonably infer that defendant was the shooter. The credibility of the identification testimony was for the trier of fact to resolve and this Court will not resolve it anew. *Davis, supra* at 700. Furthermore, although the defense presented a different account of the incident, it was up to the jury to determine whether that account was credible. *Nowack, supra*. The evidence was sufficient to sustain defendant's convictions.

### III. Ineffective Assistance of Counsel

Defendant also argues that defense counsel was ineffective for failing to object to the evidence concerning his alleged flight. Defendant argues that evidence of flight was not admissible because “the prosecutor did not establish that [defendant] knew that he was wanted by the police and, therefore, there was no proof that he was fleeing from the police.”

Because defendant failed to raise this issue in the trial court in connection with a motion for a new trial or an evidentiary hearing, this Court’s review is limited to mistakes apparent on the record. *People v Sabin (On Second Remand)*, 242 Mich App 656, 658-659; 620 NW2d 19 (2000).

Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise. *People v Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995). To establish ineffective assistance of counsel, a defendant must show that counsel’s performance was below an objective standard of reasonableness under prevailing norms and that the representation so prejudiced the defendant that there is a reasonable probability that, but for counsel’s error, the result of the proceedings would have been different. *Id.*

According to police testimony, when they could not locate defendant, a local warrant was issued for his arrest. An FBI Fugitive Task Force officer testified that he thereafter attempted to locate defendant by searching several local addresses pulled from different databases, and profiling defendant on local television. Based on information that defendant may have left Michigan, the officer obtained a federal warrant for defendant’s arrest. On August 17, 2005, the police received a call that defendant had been arrested in Atlanta, Georgia. An Atlanta police officer testified that on August 17, 2005, he executed a narcotics search warrant at an apartment. He arrested defendant, who gave an alias name and an incorrect date of birth, and two other adults. Defendant’s fingerprints later revealed his accurate identity (Tr III, p 49).

Defendant has failed to demonstrate that, had defense counsel objected to the evidence concerning flight, it would have been successful. “It is well established in Michigan law that evidence of flight is admissible.” *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995). Here, contrary to defendant’s assertion, his actions of fleeing the scene of the shooting, leaving the jurisdiction, and attempting to escape detection by providing an alias and incorrect date of birth to the Atlanta police could properly be considered evidence of “flight.” *Id.* In addition, at trial, a witness identified defendant as the perpetrator and, thus, this was not a situation where the evidence of flight was the sole evidence of defendant’s guilt. *Id.* We reject defendant’s argument that the evidence was inadmissible because there was no evidence that he left Michigan in an effort to evade the police. Furthermore, defendant has not demonstrated that the probative value of the evidence was substantially outweighed by the danger of unfair prejudice under MRE 403. Indeed, the trial court gave a limiting instruction to the jury concerning the proper use of the evidence, thereby alleviating the potential for unfair prejudice. Juries are presumed to follow their instructions. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998).

Because the evidence of flight was admissible, there was no reasonable basis for defense counsel to object. Consequently, defendant cannot establish a claim of ineffective assistance of counsel. See *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000) (counsel is not required to make a futile objection).

#### IV. Jury Instructions

Defendant lastly argues that the trial court erred in instructing the jury on flight, CJI2d 4.4. “The determination whether a jury instruction is applicable to the facts of the case lies within the sound discretion of the trial court.” *People v Ho*, 231 Mich App 178, 189; 585 NW2d 357 (1998). In light of our conclusion in part III that the evidence of flight was admissible, the trial court did not err in instructing the jury in accordance with CJI2d 4.4.

Affirmed.

/s/ Jessica R. Cooper  
/s/ William B. Murphy  
/s/ Janet T. Neff